

# FREEDOM BUILDERS PTY LTD

## FREEDOM BATHROOMS PTY LTD

### TRADING TERMS + CONDITIONS

To the fullest extent legally permissible all dealings between the customer and Freedom Bathrooms Pty Ltd ABN41806438795 and/or Freedom Builders Pty Ltd, ABN 22139056625 [Freedom] relating to the supply of any products and/or any services (services, in these Terms means any work relating to the building industry, including but not limited to the renovation of bathrooms, kitchens and dwellings ) are subject to the following Terms and conditions [these Terms] unless otherwise expressly agreed to in writing;

#### 1. BUILDING + RENOVATION WORK.

Building Work Procedure will be carried out as per either agreement or HIA or BSA contract as well as best building practise. The customer specifically agrees to abide by it's obligations under the HIA or BSA contract.

#### 2.PAYMENT

Payment is to be made by the customer as per agreement , or a Housing Industry Association (HIA) or the Building Services Authority (BSA) contract, whichever is executed between Freedom Builders Pty Ltd and the Customer without deductions or set off of any kind. Freedom may apply a payment received from a Customer to any amount owed by the Customer including; interest, part payment of an invoice, administration, collection and other costs including legal costs, on an indemnity basis, incurred by Freedom as a result of Freedom having to resort to legal action to attempt to recover monies owed by the Customer to Freedom

2A Time is to be of the essence.

2B In the event that the contract between the Customer and Freedom is one of parole, then it is specifically agreed that these Terms and conditions shall bind the parties as if the contract was in writing.

It is also specifically agreed between the parties that payment by the Customer to Freedom Builders Pty Ltd will be made as follows;

- A. A deposit of 10% of the total contract price, including GST; If the total contract price is greater than \$20,000, then the deposit will be 5% of the total contract price.
- B. Then 50% of the total contract price, including GST, on completion of the "rough in and sheeting;
- C. Then 30% of the total contract price, including GST, on completion of the tiling;
- D. Then, 10% of the total contract price, or the balance on practical completion

Payment to Freedom Bathrooms Pty Ltd is to be made by the Customer, for products, at the time of purchase.

3. INTEREST Interest will be charged at the rate of 1.75% per months on overdue payments.

4. PROPERTY

A Property in the product will not pass to the Customer until payment in full of all monies owed to Freedom on any basis is made.

B Freedom reserves the right to take possession of any and all the product that in the event the Customer has not made the agreed payments as and when they fell due and dispose of the product as Freedom sees fit. Any money received by Freedom on the sale of the product in excess of the money owed by the Customer shall be returned to the Customer as soon as practicable .

C The Customer grants permission to Freedom to enter any property where the product is situated without let or hindrance at any reasonable time, and with such force as necessary, in order to take possession of them.

D Immediately, upon delivery to the Customer of any product or building material the Customer accepts full liability for the product and/or building materials

E A certificate signed by an officer of the company (Freedom) identifying product and /or building material and certifying that monies are owing to Freedom will be conclusive evidence of Freedom's title thereto.

5. LIMITATION OF LIABILITY

1(a) The Customer agrees to limit any claim on Freedom to the cost of the replacement of product or the supply of equivalent product and/or services again.

1(b) Subject to the non- excludable consumer guarantees, pursuant to the Australian Consumer Laws Freedom shall not liable in any way for;

(1) Any claim loss or expense arising ,which is made after delivery of goods to the site, whether installed or not, after which there will be an unqualified acceptance ,

(2) any contingent, consequential, direct or indirect, special or punitive damages arising in any way and whether due to Freedoms' negligence or otherwise,

(3) any claim relating to any alleged fault or defect in any way caused or contributed to by the Customer, Freedom, and / or any third party

(4) no other term, condition, agreement, warranty (subject to the Australian Consumer Law), representation or understanding whatsoever, express or implied or otherwise binding upon Freedom, other than these Terms is made or given.

(5) The customer agrees that any warranty issues are between the manufacturer and the customer.

6. CANCELLATION and RETURNS

(A) The customer agrees that product ordered from Freedom Bathrooms Pty Ltd is to be paid in full prior to delivery to the site or before the Customer removes any product from the showroom.

(B) The customer agrees that any returns, other than on the grounds of warranty issues, shall be at Freedom Bathrooms' sole discretion.

(C) The Customer agrees that product/s which have been custom made for the customer cannot be cancelled by the Customer and will not be accepted by Freedom Bathrooms Pty Ltd ,as a return.

(D) The Customer agrees that all costs relating to any cancellation and/or return will be borne by the Customer.

## 7 QUOTATIONS

a) All quotations contain the sum total of the offer made by Freedom to the Customer. Further discussions between Freedom and the Customer may be had and the outcome of which would be reflected in any variation or if not in writing, in changes to the work the Customer allows to continue.

b) All quotations are made on a E&OE basis, so any error made in the quotation cannot be used by the Customer to its benefit.

c) All quotations must be in writing, on Freedom's letterhead and signed by an officer of or an employee of Freedom.

8. DELIVERY The Customer agrees that;

a) once the product has been delivered to site, the Customer is responsible for the safe keeping of the said product.

b) a certificate purporting to be signed by an officer or employee of Freedom, confirming delivery, shall be conclusive proof of delivery.

## 9. SECURITY FOR PAYMENT.

As security for the due and punctual payment of monies owed to Freedom and the proper observation of these Terms and Conditions the Customer hereby charges its rights, title and interest to its property, real or personal, wheresoever situate, now held or after acquired to Freedom and in addition to charging its property to Freedom, the Customer consents to Freedom lodging a Caveat or other registrable instrument, to register such charge.

## 10. EXCLUSIONS

a) No dealing with the Customer shall be or deemed to be a sale by sample.

b) If Freedom publishes material, including electronically, concerning its products and / or services or its prices, anything so published which is incompatible with these Terms, is expressly excluded

c) The Customer shall rely on its own knowledge, expertise and taste in colour, size and style in selecting product and / or services, for any purposes and any advice, representation or assistance given for or on behalf of Freedom shall be accepted at the Customer's own risk and shall not be or be deemed as expert or advisor nor to have been relied on by the Customer or any one claiming through the Customer.

d) All products are sold subject to any manufacturer's warranty and trading terms and representations applicable to those products and the provisions of the Australian Consumer Laws

e) Freedom shall not be liable nor responsible for any failure of product or services to comply with any requirements of the Customer or any other person, whether relating to manufacture, design, drawings, specifications, fabrication, installations and /or any intended use or otherwise.

f) Freedom disclaims any responsibility or liability relating to any products and/or services

1) made or performed to design, drawings, specifications and / or procedure etc., and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer;

2) utilised, stored, handled and/or maintained incorrectly or inappropriately by the customer.

g) The Customer agrees to check all products for any fault or imperfection. Any claims for rectification must be made within 7 days of delivery. Freedom accepts no responsibility for claims made after that date. The customer is to use and maintain all products in accordance with those standards and all manufacturer's and / or Freedom's recommendations and / or directions.

## 11. INTELLECTUAL PROPERTY

A. The Customer agrees that all tooling, material, industrial &/or intellectual property employed in the preparation or production of any product and/or services, including but not limited to, plans, drawings, sketches, images (including photographs, digital images etc) shall be and remain the property of Freedom to do with as it pleases and at its sole discretion, notwithstanding any contribution by the Customer relating thereto.

B. If Freedom utilises any design, patent or intellectual property, or follows any instructions provided by or on behalf of the Customer, the Customer indemnifies Freedom against any claim, proceedings, damages or liability for any loss, cost or expense arising as a result, whether for any alleged infringement of intellectual property or otherwise.

C. Pursuant to (A), above, the Customer specifically agrees to permit Freedom to make digital images (or photographs) of work being done or fully completed at the Customer's location (where the work is actually being done by Freedom for the Customer) and to use those images as Freedom sees fit and at Freedom's sole discretion.

D. The Customer must not advertise, use, or represent or have others do on their behalf or for the use of third parties any intellectual property belonging to Freedom without the prior consent in writing of Freedom.

E. If the Customer breaches or permits to be breached any part of this clause, it acknowledges Freedom may suffer claims by third parties as a result and clause 13 (indemnity) will apply.

## 12. DEFAULT

A. Upon any default or breach of these Terms or of any dealings with Freedom by the Customer, Freedom may, inter alia, call up all monies, retain all monies paid and/or cease further deliveries and/or the provision of services and recover from the Customer all monies owed, all lost profits and/or, at Freedom's discretion, take immediate possession of any product, not installed, without prejudice to any other rights, and without being liable, in any way to any party.

B. The Customer agrees not to commence or continue or permit to be commenced or continued through it, any suit or action against Freedom while the Customer is in such breach or default.

C. The Customer agrees to indemnify Freedom for all costs, including legal costs on an indemnity basis and expenses incurred by Freedom and its solicitors, mercantile agents and other parties acting on Freedom's behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of goods or otherwise.

D. Freedom may apply any payments in reduction of recovery costs &/or expenses, interest &/or part of or all of any principal debt in such order or priority as Freedom, in its absolute and unfettered discretion, elects.

E. The Customer irrevocably authorises the payment, directly to Freedom, of any debt due to the Customer in reduction of any amount due by the Customer to Freedom under these Terms or otherwise.

### 13. INDEMNITY

The Customer indemnifies Freedom against any claim or loss arising from or related to any dealings between Freedom and the Customer or anything arising there from or as a result of or subsequent to any default or breach of these Terms or any dealing with Freedom and including any liability arising under The Australian Consumer Law

### 14. OTHER TERMS AND CONDITIONS

No Terms and conditions sought to be imposed by the Customer upon Freedom shall apply.

### 16. JURISDICTION

The Customer agrees that all contracts and/or any other business dealings made with Freedom shall be governed by the Laws of Queensland and the Customer agrees to submit to the non-exclusive jurisdiction of the appropriate Court as nominated by Freedom in Brisbane.

### 17. WAIVER

If Freedom elects not to exercise any rights as a result of any default or breach of these Terms or of any dealings with the Customer this shall not constitute a waiver of any rights of Freedom relating to any subsequent or other breaches and/or defaults by the Customer.

### 18. NOTICE

The Customer agrees it shall be deemed to have notice of any change to these Terms immediately they are adopted by Freedom whether or not the Customer has actual notice. The Customer shall be and be deemed to be bound by any Terms and conditions of trade adopted by Freedom immediately they are adopted, notwithstanding any other purported or pre-existing Terms and conditions which might otherwise applied. Freedom will as soon as practicable transmit by the fastest method available to it, details of any and all changes to these Terms to the Customer.

### 19. FORCE MAJEURE

Freedom shall not be in default or in breach of any contract with the Customer as a result of "force majeure", which is any happening, incident or circumstance which is outside the reasonable control of Freedom.

### 20. INSOLVENCY

A. If the Customer commits or is involved in any act of insolvency, the Customer shall be deemed to be in breach of these Terms.

B. An act of insolvency is deemed to include bankruptcy, liquidation, administration or the like and any failure to pay in accordance with these Terms.

### 21. SEVERABILITY

Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

### 22. VARIATION

Any variation or cancellation of these Terms must be in writing and approved by Freedom.

### 23. NO SET-OFF

No set-off or counter claim will be made or applied by the Customer until payment in full of all bona fides invoices raised by Freedom (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.

### 24. SPECIFICATIONS

A Any illustrations, drawings, sketches or specifications (specs) are drafts and approximations.

B Any tangible or intellectual property rights, in specs, remain the property of Freedom and may be recalled at any time.

C Specs are to be treated at all times as confidential and not made any use of whatsoever, without the prior written consent of Freedom.